

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Michael Johnson,
Plaintiff

v.

American Federation of Government
Employees, Local 1199; Vernon Steed,
individually and in his capacity as President
of AFGE Local 1199; Federal Labor
Relations Authority; and Does I-X and Roe
Corporations 110, inclusive,

Defendants

2:16-cv-01739-JAD-GWF

**Order Granting the FLRA's Unopposed
Motion to Dismiss and Vacating Hearing**

[ECF Nos. 4, 11]

Plaintiff Michael Johnson sues the Federal Labor Relations Authority ("FLRA") for violating his due process rights when resolving his labor-related dispute with his union and its president. He also sues the union and its president for defamation and intentional interference with his employment contract, and he asserts an additional negligence claim against the union.¹

The FLRA moved to dismiss Johnson's single § 1983 claim against it, arguing that the claim is barred by sovereign immunity and fails because it does not allege an act under color of state law or in violation of any constitutional right.² Johnson's opposition, if any, was due by August 22, 2016.³ He neither filed a response by that deadline nor moved to extend it. Local Rule 7-2(d) states that "The failure of an opposing party to file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a consent to the granting of the motion." I apply this rule and,

IT IS HEREBY ORDERED that the Federal Labor Relations Authority's Motion to Dismiss [ECF No. 4] is **GRANTED**. Plaintiff's **first claim for relief (his only claim against**

¹ ECF No.1.

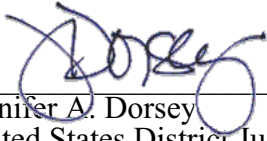
² ECF No. 4.

³ L.R. 7-2(b).

1 **the FLRA) is DISMISSED with prejudice** under FRCP 12(b)(6) because it does not and cannot
2 plead the state action required for a § 1983 claim,⁴ so amendment would be futile. This order
3 **terminates all claims against the Federal Labor Relations Authority** in this matter.

4 IT IS FURTHER ORDERED that the **hearing set for 10/3/16 is VACATED** and the
5 Motion to Vacate that hearing **[ECF No. 11] is DENIED** as moot.

6 DATED: August 26, 2016

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8 Jennifer A. Dorsey
9 United States District Judge
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28 ⁴ Because I grant the motion on this basis, I decline to reach the remaining arguments.